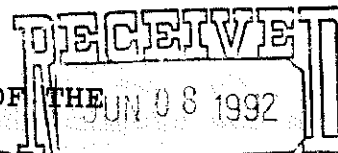


CONSIDERATION OF FINAL ADOPTION OF THE
ADDITION OF ARTICLE 15 TO
327 INDIANA ADMINISTRATIVE CODE



PERMIT SECTION
EPA, REGION V

ISSUE

On February 12, 1992, the Indiana Water Pollution Control Board preliminarily adopted the addition of 327 IAC 15. The Board appointed Mr. Lonnie Brumfield as Hearing Officer. Mr. Brumfield has conducted three public hearings, and now files with the Board his Findings of Fact and Recommendation for final adoption.

DISCUSSION

The Board is required by law to fully consider the comments received at the public hearings. The requirement of consideration is met either by attendance at the public hearings or review of the Hearing Officer's Summary of Comments and Responses. The Board may consider any other information available to it, in addition to the public comment, in determining whether to adopt in final form.

Before the Board can adopt a rule in final form it must take into account the following factors:

- all existing physical conditions and the character of the area affected;
- past, present and probable future uses of the area, including the character of the uses of surrounding areas;
- zoning classifications;
- the nature of existing water quality;
- technical feasibility; including the quality of conditions that could reasonably be achieved through coordinated control of all factors affecting the quality;
- economic reasonableness of measuring or reducing any particular type of pollution; and
- the right of all persons to an environment sufficiently uncontaminated as not be injurious to human, plant, animal, or aquatic life or the reasonable enjoyment of life and property.

Finally the Board may not adopt the rule in a final form which is substantially different than that which was preliminarily adopted. In determining if the rule is substantially different, the Board must consider:

- the extent to which all persons affected by the adopted rule should have understood from the preliminarily adopted rule that their interests would be affected;
- the extent to which the subject matter of the adopted rule or the issues that were determined in the adopted rule are different from the subject matter or issues that were involved in the preliminarily adopted rule;

--the extent to which the effects of the adopted rule differ from the effects that would have occurred if the preliminarily adopted rule had been adopted as written originally.

OPTIONS

The Board may:

1. accept the recommendation of the Hearing Officer and adopt the rule, as modified, based on public comment;
2. adopt the rule as it was preliminarily adopted;
3. adopt the rule with other non-substantive changes;
4. send the rule back to staff for revisions; or
5. not go forward with final adoption.

Findings of Facts and Recommendations
of Hearing Officer
Mr. Lonnie Brumfield
for the Water Pollution Control Board
of the State of Indiana

Proposed addition of 327 Indiana Administrative Code (IAC),
Article 15 (General Permit Rules)

Pursuant to the actions of the Water Pollution Control Board's (Board), February 12, 1992, preliminary adoption of the addition of Article 15 to 327 IAC, formal written notice of public hearings to be held on April 23, April 28, and April 30, 1992, to consider the adoption of amendments were given in accordance with the provisions of IC 4-22-2 and IC 13-7-7 by publishing these notices in the April 1, 1992 Indiana Register and in the following newspapers:

The Indianapolis Star
The Kokomo Tribune
The Herald-Times, Bloomington

The proofs of publication of these notices were received by the Office of Water Management and the notices and proofs of publication were incorporated into the record of these proceedings by reference and placed in the official files of the Office of Water Management.

Dorothy E. Huffman was present and duly sworn to act as the official reporter of the proceedings on April 23, 1992, in Kokomo, Indiana, Guin Brown was present and duly sworn to act as the official reporter of the proceedings at the April 28, 1992 hearing in Indianapolis, and Bobbie Belden was present and duly sworn to act as the official reporter of the proceedings at the April 30, 1992, hearing in Bloomington, Indiana.

Summary of the Proceedings

Mr. Lonnie Brumfield, Hearing Officer, opened the meetings by explaining the purpose of the public hearings and stating that the legal requirements for convening a public hearing had been satisfied. He detailed the procedures for submitting oral and written testimony and informed those present that a written report summarizing the comments would be prepared and submitted to the Board recommending the form in which the rules should be finally adopted.

Mr. Brumfield also provided a brief history behind the amendments and reasons for recommending adoption and introduced the following documents into record:

1) The additions to 327 IAC 15 as preliminarily adopted by the Board on February 12, 1992.

2) The Publisher's Claims and Affidavits from The Indianapolis Star, The Kokomo Tribune, and The Herald-Times, Bloomington.

Comments and Responses:

Oral testimony was presented at the public hearings on April 23, 1992, April 28, 1992, and April 30, 1992. Written comments were received until May 21, 1992, when the comment period closed.

Comments on the rulemaking action, DEM staff responses, and the Recommendation of the Hearing Officer are attached as Exhibit A.

Findings of Facts

1) That the Water Pollution Control Board is an agency of the State of Indiana and is authorized under IC 13-1-1-4 and IC 13-7-7-5 to adopt the proposed rules in accordance with the provisions of IC 13-7-7 and IC 4-22-2.

2) That pursuant to the requirements of IC 4-22-2-24 and IC 13-7-7-4, notices of public hearings held on April 23, 1992, April 28, 1992, and April 30, 1992, for proposed amendments to 327 IAC 15 were published in the following newspapers: The Indianapolis Star, The Kokomo Tribune, and The Herald-Times, Bloomington.

3) That the Board complied with the notice requirements of IC 4-22-2-24(e) prior to holding the public hearings.

4) Pursuant to the requirements of IC 13-7-7-4 three public hearings were held at the following locations:

The City of Kokomo, Council Chambers, 100 South Union Street, Kokomo, Indiana, April 23, 1992;

Department of Environmental Management, 105 South Meridian Street, Indianapolis, Indiana, April 28, 1992; and

The Whittenberger Auditorium, IU Campus, 1st Floor, 900 East 7th Street, Bloomington, Indiana, April 30, 1992.

5) The following documents were introduced into the record at the public hearings:

- The amendments to 327 IAC 15 as preliminarily adopted by the Board on February 12, 1992; and
- The Publisher's Claims and Affidavits from the aforementioned newspapers.

6) The Hearing Officer's recommendations have taken into consideration the factors listed in IC 13-7-7-2(b) as follows:

- all existing physical conditions and the character of the area affected;
- past, present, and probable future uses of the area, including the character of the uses of surrounding areas;
- zoning classifications;
- the nature of the existing water quality;
- Technical feasibility, including the quality of conditions that could reasonably be achieved through coordinated control of all factors affecting the quality;
- economic reasonableness of measuring or reducing any particular type of pollution; and
- the right of all persons to an environmental sufficiently uncontaminated as not to be injurious to human, plant, or aquatic life, or the reasonable enjoyment of life and property.

7) All comments, OWM responses, and the Hearing Officer's recommendations contained in this document are hereby adopted as findings.

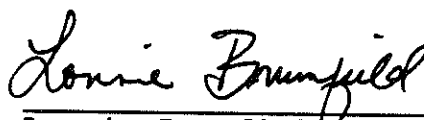
Recommendations:

Now, therefore, based on the above findings of fact, it is recommended:

1. That the Board adopt in final form the proposed addition of Article 15, Rules 1 through 6, to 327 Indiana Administrative Codes as revised based on the Hearing Officer's consideration of comments received during the public hearing process.

2. That upon final adoption by the Board, the adopted rule be submitted to the Office of the Attorney General, the Governor, and the Secretary of State for promulgation.

Respectfully submitted:



Lonnie Brumfield,
Hearing Officer
Water Pollution Control Board

Dated: 6/3/92

